

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ERJ Media, LLC)	File No.: EB-FIELDSCR12-00000697
)	NAL/Acct. No.: 201232600009
Licensee of Station WOIR)	FRN: 0018302281
Miami, Florida)	Facility ID No.: 13776
)	

FORFEITURE ORDER

Adopted: February 25, 2013

Released: February 25, 2013

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of one thousand seven hundred and fifty dollars (\$1,750) to ERJ Media, LLC (ERJ Media), licensee of Station WOIR in Miami, Florida, for willful and repeated violation of Section 73.1745(a) of the Commission's rules (Rules).¹ The noted violation involved ERJ Media's failure to operate within authorized power limitations.

II. BACKGROUND

2. Station WOIR, an AM radio station, is authorized to operate on 1430 kHz with 5000 watts during the day and 500 watts at night. On April 6, 2012, the Enforcement Bureau's Miami Office (Miami Office) issued a Notice of Apparent Liability for Forfeiture and Order (NAL)² to ERJ Media for its failure to operate within authorized power limitations. The NAL proposed a \$4,000 forfeiture and ordered ERJ Media to submit a written statement, signed under penalty of perjury, stating whether Station WOIR is now in compliance with Section 73.1745(a) of the Rules.³ ERJ Media submitted a response to the NAL, requesting that we reduce the proposed forfeiture based on financial hardship.⁴ In addition, ERJ Media reported that following the agent's inspection on February 13, 2012, it confirmed that the over power operation was a result of problems with the Station's equipment. ERJ states that it made appropriate repairs to correct the issue, and that it has since been in compliance with the Rules.⁵

¹ 47 C.F.R. § 73.1745(a).

² *ERJ Media, LLC*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 3291 (Enf. Bur. 2012) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

³ *Id.*

⁴ Letter from Carlos Acosta, Treasurer/Director, ERJ Media, LLC, to Michael Mattern, Resident Agent, Miami Office, South Central Region, Enforcement Bureau at 1 (Apr. 25, 2012) (on file in EB-FIELDSCR12-00000697) (NAL Response).

⁵ *See id.*

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (Act),⁶ Section 1.80 of the Rules,⁷ and the *Forfeiture Policy Statement*.⁸ In examining ERJ Media's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁹ As discussed below, we have fully considered ERJ Media's response in light of these statutory factors, and find that a reduction of the forfeiture is justified.

4. Section 73.1745(a) of the Rules states that "[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part."¹⁰ Station WOIR is licensed to operate with 5000 watts during the day and with 500 watts at night. As reflected in the *NAL*, the record evidence showed that, on February 10 and 11, 2012, Station WOIR was operating its station with daytime power of 5000 watts after sunset, which was well above its authorized level.¹¹ Since ERJ Media does not dispute that it violated Section 73.1745(a), we affirm the findings in the *NAL* and conclude that ERJ Media willfully and repeatedly violated Section 73.1745(a) of the Rules by failing to operate within authorized power limitations.

5. In its response, ERJ Media asks the Bureau to consider reducing the proposed forfeiture based on its financial circumstances. With regard to an individual's or entity's inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.¹² Based on the gross revenue information reflected in the tax returns provided by ERJ Media, we find that there is a sufficient basis to reduce the forfeiture. Accordingly, we reduce the forfeiture from \$4,000 to \$1,750 based solely on ERJ Media's inability to pay claim.¹³

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, ERJ Media, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand seven hundred and fifty dollars (\$1,750) for violations of Section 73.1745(a) of the Commission's rules.¹⁴

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

⁸ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

⁹ 47 U.S.C. § 503(b)(2)(E).

¹⁰ 47 C.F.R. § 73.1745(a).

¹¹ *NAL*, 27 FCC Rcd at 3292, para. 4.

¹² See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Forfeiture Order, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

¹³ This forfeiture amount falls within the percentage range that the Commission has previously found acceptable. See *id.*

¹⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 73.1745(a).

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁵ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁶ ERJ Media, LLC shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

8. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

¹⁵ 47 C.F.R. § 1.80.

¹⁶ 47 U.S.C. § 504(a).

¹⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁸ See 47 C.F.R. § 1.1914.

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to ERJ Media, LLC at 14100 SW 144th Ave., Miami, FL 33186.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau